

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

PLUMBERS AND FITTERS LOCAL 101, et al.,

Plaintiffs,

v.

HIRTH PLUMBING AND HEATING COMPANY,

Defendant.

No. 09-0853-DRH

ORDER

HERNDON, Chief Judge:

On October 9, 2009, Plaintiffs filed a two-count Complaint against Hirth Plumbing and Heating Company (“Hirth”) for breach of settlement agreement (Count I) and failure to timely submit contributions (Count II) all pursuant to section 502(g)(2) of the Employment Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(g)(2) (Doc. 2). As to Count I, the Complaint alleges that in cause number **07-cv-0556-DRH-PMF** “[o]n or around February 19, 2008, the parties entered into a settlement agreement under which defendant agreed to pay plaintiffs \$331,528.79 pursuant to a payment schedule. This amount consists of \$329,209.24 in contributions for the period of September 2004 through November 2007 plus interest commencing January 1, 2008 and \$2,319.55 in attorney’s fees.” (Doc. 2; p. 4, ¶ 10). The Complaint also alleges that Hirth has failed to make any payments pursuant to the payment schedule despite Plaintiffs’ demands to do so. As to Count II, the Complaint alleges that Hirth has failed to submit its monthly fringe benefits

reports and contributions for the period of July 2009 through September 2009 and that Plaintiffs have demanded payments.

Now before the Court is Plaintiffs' March 26, 2010 motion for summary judgment (Doc. 21). Plaintiffs move the Court for entry of judgment in favor of themselves and against Hirth in the amount of \$523,693.74 based on unpaid contributions, interest, attorney fees and costs. Plaintiffs also seek an audit of Hirth's books and records for the period of December 1, 2007 to the present. As of this date, Hirth has not responded to the motion for summary judgment. Pursuant to **Local Rule 7.1(c)**, the Court considers Hirth's failure to file a response as an admission to the merits of the motion.¹

Accordingly, the Court **GRANTS** the motion. The Court enters judgment in favor of Plaintiffs and against Hirth in the amount of \$523,693.74 based on unpaid contributions, interest, attorney fees and costs. Also, the Court **ALLOWS** Plaintiffs an audit of Hirth's books and records for the period of December 1, 2007 to the present. The Court **DIRECTS** the Clerk of the Court to enter judgment reflecting the same.

IT IS SO ORDERED.

Signed this 30th day of April, 2010.

/s/ David R. Herndon

**Chief Judge
United States District Court**

¹**Local Rule 7.1(c)** provides in part: "Failure to timely file a response to a motion may, in the Court's discretion, be considered an admission of the merits of the motion."